

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF  
PUBLIC SAFETY,

Petitioner,

vs.

LARRY D. MARSH,

Respondent.

No. 13-1875 PO

**DECISION**

Larry D. Marsh is subject to discipline because he committed criminal offenses and acts under color of law that involved moral turpitude.

**Procedure**

The Director of the Department of Public Safety (“the Director”) filed a complaint on October 25, 2013, seeking this Commission’s determination that Marsh’s peace officer license is subject to discipline. Marsh was served by certified mail with a copy of the complaint and our notice of complaint/notice of hearing on November 1, 2013. He did not file an answer to the complaint.

On December 10, 2013, the Director filed a motion for summary decision (“the motion”). We allowed Marsh until December 27, 2013 to respond to the motion, but he did not respond.

Pursuant to 1 CSR 15-3.446(6)(A),<sup>1</sup> we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.<sup>2</sup> Furthermore, as a result of Marsh's failure to answer the complaint, we deem Marsh to have admitted the allegations in the complaint.<sup>3</sup> The following facts, based on that evidence, are undisputed.

### **Findings of Fact**

1. Marsh was a licensed peace officer at all relevant times. His license is still current and active.

2. On or about February 23, 2012, Marsh falsely entered data into the Attorney General's racial profiling system by stating that certain traffic stops were being made on an interstate highway, knowing that such entry was false and that the citations were a public record, with the purpose of impairing the legibility of the public record.

3. On or about February 28, 2012, Marsh falsely entered data into the Attorney General's racial profiling system by stating that certain traffic stops were being made on a city street, knowing that such entry was false and that the citations were a public record, with the purpose of impairing the legibility of the public record.

4. On August 2, 2013, Marsh was charged by an amended information on two counts of tampering with a public record in violation of § 575.110,<sup>4</sup> a Class A misdemeanor.

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<sup>1</sup> All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> 1 CSR 15-3.446(6)(B).

<sup>3</sup> See 1 CSR 15-3.380(C)1.

<sup>4</sup> RSMo 2000. Statutory references are to RSMo 2013 Supplement unless otherwise indicated.

5. Marsh pled guilty to both counts and was sentenced to six months' confinement in the county jail. The trial court suspended the execution of the sentence and placed Marsh on probation for two years.

### **Conclusions of Law**

We have jurisdiction to hear this case.<sup>5</sup> The Director has the burden of proving that Marsh has committed an act for which the law allows discipline.<sup>6</sup> The Director alleges there is cause for discipline under § 590.080.1(2) and (3):

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

### **Criminal Offenses – Subdivision (2)**

Marsh pled guilty to two counts of tampering with a public record. Tampering with a public record is a Class A misdemeanor and, therefore, a criminal offense.<sup>7</sup> Marsh was sentenced on both counts. Both convictions resulted in final judgments.<sup>8</sup> A final judgment resulting from a guilty plea collaterally estops Marsh from arguing that he did not commit the criminal offenses.<sup>9</sup>

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<sup>5</sup>Section 590.080.2.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>7</sup>Section 556.016, RSMo 2000.

<sup>8</sup>*State v. Plastec, Inc.*, 961 S.W.2d 906, 907 (Mo.App. E.D. 1998); *State v. Hendel*, 468 S.W.2d 664, 665-66 (Mo.App. St.L.D. 1971)

<sup>9</sup>*James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004).

### Act Under Color of Law Involving Moral Turpitude– Subdivision (3)

We infer from the facts that the commission of Marsh’s crimes required access to the Attorney General’s racial profiling system, and that Marsh had such access by virtue of his position as a peace officer. Because Marsh misused his authority as a peace officer to commit these crimes, we find he acted under color of law<sup>10</sup> or on active duty.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”<sup>11]</sup>

As used in § 590.080.1, “moral turpitude” means “the wrongful quality shared by acts of fraud, theft, bribery, illegal drug use, sexual misconduct, and other similar acts, as defined by the common law of Missouri.” 11 CSR 75-13.090(2)(B). We consider whether Marsh’s crimes share this “wrongful quality,” or otherwise meet the definition of moral turpitude.

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,<sup>12</sup> a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:<sup>13</sup>

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and

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<sup>10</sup> See *McDade v. West*, 223 F.3d 1135, 1139 (9<sup>th</sup> Cir. 2000) (state employee who accessed information through government-owned database acted under color of state law).

<sup>11</sup> *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>12</sup> 213 S.W.3d 720 (Mo. App., W.D. 2007).

<sup>13</sup> *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

(3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.<sup>14</sup> The Director’s complaint describes Marsh’s conduct as “falsely enter[ing] data into the Attorney General’s racial profiling system by stating that the traffic stops were being made on an interstate highway<sup>15</sup> knowing that such entry was false and that the citations are a public record, with the purpose to impair the legibility of the public record, in violation of § 575.110 RSMo....”<sup>16</sup> According to the complaint, he did this twice. Even if tampering with a public record is not a Category 1 crime, it would be a Category 3 crime, and under the facts in this case, it involves moral turpitude.

Peace officers are required to report specific information for each vehicle stop made in the state, including the location of the stop.<sup>17</sup> The information is submitted annually by the peace officer’s law enforcement agency to the Attorney General, who then analyzes the information and submits a report of his findings to the governor, the general assembly, and to each law enforcement agency no later than June first of each year.

The reported information enables the Attorney General to determine whether a law enforcement agency has effectively implemented a policy on race-based traffic stops that prohibits the practice of routinely stopping members of minority groups for violations of vehicle

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<sup>14</sup> *Brehe*, 213 S.W.3d at 725.

<sup>15</sup> Although the complaint states otherwise, the amended information indicates that on February 28, 2012, the data Marsh entered into the Attorney General’s racial profiling system stated falsely that the traffic stops were being made on a city street, not an interstate highway.

<sup>16</sup> Complaint ¶ 6.

<sup>17</sup> Section 590.650.2(10). While the complaint fails to cite this statute, a description of the database into which Marsh entered the false data clearly describes the vehicle stop reports required to be made by § 590.650. We take official notice of the statute and its contents. *See* § 536.070(6) (agencies shall take notice of all matters of which courts may take judicial notice).

laws as a pretext for investigating other violations of criminal law, so that such pattern may be investigated.<sup>18</sup> The governor may sanction a law enforcement agency that fails to comply with the law by withholding state funds.<sup>19</sup>

The Attorney General's analysis of vehicle stops cannot be accurate or useful if the information on which it is based is false. By intentionally entering false information into the racial profiling system, Marsh subverted the very purpose of the law and undermined the work of the Attorney General as mandated by § 590.650. Given these circumstances, we find Marsh's crimes were deceitful, dishonest, contrary to justice, and share the "wrongful quality" of the crimes described in 11 CSR 75-13.090(2)(B). His crimes involved moral turpitude. Therefore, the Director has shown cause for discipline under § 590.080.1(3).

### **Summary**

Marsh is subject to discipline under § 590.080.1(2) and (3). We grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on March 19, 2014.

/s/ Mary E. Nelson  
MARY E. NELSON  
Commissioner

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<sup>18</sup> Section 590.650.5.

<sup>19</sup> Section 590.650.6.